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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,

USA CAPITAL REALTY ADVISORS, LLC.¹

**USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,**

**USA CAPITAL FIRST TRUST DEED
FUND, LLC,²**

USA SECURITIES, LLC,³

Debtors.

Affects:

- All Debtors
 - USA Commercial Mortgage Company
 - USA Capital Realty Advisors, LLC
 - USA Capital Diversified Trust Deed Fund, LLC
 - USA Capital First Trust Deed Fund, LLC
 - USA Securities, LLC

Case No. BK-S-06-10725-LBR¹
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR²
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

FIRST OMNIBUS OBJECTION OF USACM TRUST TO PROOFS OF CLAIM BASED ENTIRELY UPON INVESTMENT IN THE CORNMAN TOLTEC LOAN

Date of Hearing: September, 30 2011

Time of Hearing: 9:30 a.m.

Estimated Time for hearing: 10 min.

The USACM Liquidating Trust (the “USACM Trust”) moves this Court, pursuant to § 502 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an order disallowing 80% of each Proof of Claim listed in **Exhibit A** and allowing the

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.



1 remaining 20%. These claims were filed by investors (“Direct Lenders”) against USA
2 Commercial Mortgage Company (“USACM”) based upon an investment in a loan (the
3 “Cornman Loan”) to Cornman Toltec 160, LLC (the “Borrower”). This Objection is
4 supported by the Court’s record and the Declarations of Geoffrey L. Berman and Edward
5 M. Burr in Support of Omnibus Objections to Proofs of Claim Based Upon the Investment
6 in the Cornman Loan. (the “Berman Decl.” and “Burr Decl.”).

7 THIS OBJECTION DOES NOT RELATE TO AND WILL NOT IMPACT THE
8 DIRECT LENDERS’ RIGHTS TO REPAYMENT ON THE CORNMAN LOAN, TO
9 SHARE IN ANY PROCEEDS GENERATED FROM THE SALE OF THE REAL
10 PROPERTY SECURING THE CORNMAN LOAN, OR TO SHARE IN THE
11 RECOVERY OF ANY FUNDS FROM THE GUARANTOR FOR THE LOAN.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. BACKGROUND FACTS**

14 **a. The USACM Bankruptcy**

15 On April 13, 2006 (“Petition Date”), USACM filed a voluntary petition for relief
16 under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as
17 debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
18 Debtor’s post-petition management of the Debtor was under the direction of Thomas J.
19 Allison of Mesriow Financial Interim Management, LLC, who served as the Chief
20 Restructuring Officer.

21 USACM was a Nevada corporation that, prior to the Petition Date, was in the
22 business of underwriting, originating, brokering, funding and servicing commercial loans
23 primarily secured by real estate, both on behalf of investors and for its own account. That
24 business included the solicitation of investors to purchase fractional interest in loans that
25 USACM originated and then serviced. These investors are referred to as “Direct Lenders”
26 in USACM’s bankruptcy case and in this Objection.



1 On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third
 2 Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No.
 3 2376]. As part of the Plan, and pursuant to an Asset Purchase Agreement filed with this
 4 Court, USACM sold the servicing rights to most of the loans it serviced to Compass
 5 Partners, LLC and Compass Financial Partners, LLC (“Compass”), including the Cornman
 6 Loan. The sale to Compass closed on February 16, 2007.

7 The USACM Trust exists as of the Effective Date of the Plan, which was March 12,
 8 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the
 9 successor to USACM with respect to standing to seek allowance and disallowance of
 10 Claims under 11 U.S.C. § 502(a).

11 Upon information derived from filings in the United States District Court, District
 12 of Nevada, *3685 San Fernando Lenders Company, LLC, et al v. Compass USA SPE, LLC,*
 13 *et al*, No. 2:07-cv-00892-RCJ-GWF action, the Trust believes that “Silar Advisors, LP
 14 (“Silar”) financed Compass’ acquisition of the Purchased Assets, including the loan
 15 service agreements in the USACM bankruptcy case and took a secured interest in those
 16 Purchased Assets by executing a Master Repurchase Agreement (“Repurchase
 17 Agreement”) with Compass, and by filing a UCC-1 financing statement with the State of
 18 Delaware.” *Id.* Docket 1250 at 13-14 (citations to declarations omitted).

19 Further, from filings in the same action, the Trust believes that “Effective as of
 20 September 26, 2007, Silar foreclosed on Compass through Asset Resolution LLC (“Asset
 21 Resolution”) and took ownership of the Purchased Assets. ... Silar created Asset
 22 Resolution as a ‘single purpose entity,’ conveyed all of its interests in the Repurchase
 23 Agreement to Asset Resolution, and Asset Resolution properly foreclosed on the assets of
 24 Compass, including the Purchased Assets.” (Citations omitted.) Asset Resolution LLC is
 25 now a debtor in a chapter 7 bankruptcy case pending in Nevada, case no. BK-S-09-32824-
 26



1 RCJ, along with certain affiliates.⁴ William A. Leonard, Jr. was appointed trustee in the
 2 Asset Resolution case. By Order entered on July 19, 2010 by the Hon. Robert C. Jones in
 3 the Asset Resolution Case, the servicing rights for 19 loans were transferred to Cross,
 4 FLS, however, the Cornman Loan was not one of them.

5 The Trust has attempted to monitor loan collections through monitoring the district
 6 court litigation and the Asset Resolution bankruptcy case, but has received limited
 7 information concerning servicing and resolution of direct loans by Compass/Silar/Asset
 8 Resolution or their successors, including the trustee in bankruptcy for Asset Resolution.
 9 The following is the extent of the USACM Trust's information on the current servicing
 10 and status of the Cornman Loan.

11 **b. The Cornman Loan**

12 USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding
 13 for an acquisition and development loan to borrowers identified as "Cornman Toltec 160,
 14 LLC." The Offer Sheet stated that the Borrower was a joint venture between USA
 15 Investment Partners and an entity named "Unlimited Holdings." A copy of the Offer
 16 Sheet is attached hereto as **Exhibit B** and incorporated by this reference. (Berman Decl., ¶
 17 4.) The total loan amount proposed was \$6,550,000. *Id.* The Offer Sheet described the
 18 investment as a "First Trust Deed Investment" and noted that the investment would be
 19 secured by a first deed of trust on 160 acres of residential land in Casa Grande, Arizona,
 20 located at the North East Corner of Cornman and Toltec Butter Roads. The Offer Sheet
 21 also provided a loan-to-value of "approximately 51% of estimated per acre value on
 22 completion of mapping process."⁵

23 ⁴ 10 90 SPE LLC, Fiesta Stoneridge LLC, CFP Gramercy SPE LLC, Bundy 2.5 Million SPE LLC, CFP
 24 Cornman Toltec SPE LLC, Bundy Five Million LLC, Fox Hills SPE LLC, HFAH Monaco SPE LLC,
 Huntsville SPE LLC, Lake Helen Partners SPE LLC, Ocean Atlantic SPE LLC, CFP, Gess SPE LLC, CFP
 25 Brookmere Matteson SPE LLC, and Shamrock SPE LLC.

26 ⁵ USACM received an appraisal on September 16, 2005 from Lyons Valuation Group, LLC that appraised
 the market value of the property, free and clear of all encumbrances, at \$6,500,000. The estimated value of
 the property, based on an estimate of 550 single family residential units, was \$11,500,000



1 On June 24, 2005, Borrower made and delivered to various lenders, including the
2 Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Deed of Trust”
3 (the “Note”) and a Loan Agreement. (Berman Decl., ¶5.) The Note and Loan Agreement
4 provided for a loan of up to \$6,550,000, with an initial advance of \$5,400,000. *Id.* The
5 loan amount was intended for the Borrower to acquire the real property and pay for certain
6 pre-development costs and expenses. The Note was secured by a “Deed of Trust,
7 Assignment of Rents, Security Agreement and Fixture Filing” (the “Deed of Trust”) from
8 Borrower in favor of the Direct Lenders, which was recorded in the official records of
9 Pinal County, Arizona on June 30, 2005 at Instrument Number 2005-079688, as were
10 subsequent amendments to the Deed of Trust to secure advances on the loan up to
11 \$6,375,000. (Berman Decl., ¶ 6.) The Note was also supported by an Unconditional
12 Guaranty signed by Unlimited Holdings, Tom Hantges, and Joseph Milanowski on June
13 24, 2005. (Berman Decl., ¶ 7.)

14 The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows
15 that Borrower was “Performing” on the Note as of July 31, 2006. (Berman Decl., ¶ 8.)
16 Pursuant to the “Loan Summary” dated February 28, 2007, however, the loan was in
17 “Maturity Default” as of February 28, 2007. During this bankruptcy case through the
18 transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any
19 interim payments by the borrower in accordance with this Court’s orders and the
20 confirmed Plan.

21 Counsel for the Trustee obtained a title report on the subject property. Pursuant to
22 the title report, CFP Cornman Toltec SPE LLC, bidding on behalf of the Direct Lenders,
23 purchased the property by making a \$4,000,000 credit bid at a March 7, 2008 foreclosure
24 sale. The property was foreclosed by the SPE on behalf of direct lenders at approximately
25 66% of the original loan so the direct lenders (in theory) are the owners of the
26 property/collateral.



1 **c. The Cornman Claims**

2 **Exhibit A**, attached, lists Proofs of Claim filed by Direct Lenders that appear to be
3 based upon an investment in the Cornman Loan. (Burr Decl. ¶ 7.) **Exhibit A** identifies
4 the Proof of Claim number, the claimant, the claimant's address, the total amount of the
5 claim and the total amount of the claim that appears to be related to an investment in the
6 Cornman Loan based upon the information provided by the claimant. (Burr Declaration
7 ¶ 7.) The claims listed in **Exhibit A** are referred to hereafter as the "Cornman Claims."
8 As required by Nevada LR 3007, a copy of the first page of the proof of claim for each of
9 the claims referenced in **Exhibit A** are attached as **Exhibit C**.

10 **II. JURISDICTION**

11 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
12 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
13 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

14 The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and
15 Bankruptcy Rule 3007.

16 **III. APPLICABLE AUTHORITY**

17 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed
18 will be allowed unless a party in interest objects. If a party in interest objects to the proof
19 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and
20 shall allow the Claim except to the extent that the Claim is "unenforceable against the
21 debtor . . . under any . . . applicable law for a reason other than because such claim is
22 contingent or unmatured." 11 U.S.C. § 502(b). A properly filed proof of claim is
23 presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof
24 of claim controverts the presumption, the creditor ultimately bears the burden of
25 persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*



1 *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.
2 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

3 **IV. THE OBJECTION**

4 USA Investment Partners ("USA IP") held an interest in the Borrower. Although
5 fully disclosed, as such, and unlike many of the other loans brokered by USACM, the
6 Cornman Loan was not completely arms' length. The Direct Lenders however did receive
7 the first position security interest in the collateral promised them by the Borrower through
8 the Offer Sheet. The Trust believes USACM is not liable for the Borrower's default but
9 the Trustee recognizes the potential conflict of interest arising from USACM's brokering
10 the loan for an affiliate, being the loan's servicer and then potentially not acting diligently
11 to demand payment from a defaulting borrower. USACM, however, is not responsible for
12 any decrease in the value of the collateral and the Direct Lenders took a known risk by
13 investing in a promissory note secured by a lien on real property.

14 In light of the potential conflict of interest, the Trustee is prepared to allow a partial
15 claim for the Direct Lenders that have filed proofs of claim arising from their investment
16 in the Cornman Loan in an amount of 20% of the portion of the Proof of Claim that does
17 not relate to diverted principal. The Trust objects to the remaining 80% of the claim,
18 excluding diverted principal, because the Direct Lenders fail to state a claim. USACM
19 does not appear to have breached the loan servicing agreements with respect to collection
20 of the Cornman Loan.

21 To the extent the Direct Lenders still hold any interest in the Cornman Loan, the
22 Note, or the Deed of Trust, this objection will not affect the Direct Lenders' right to be
23 repaid on the Cornman Loan by the Borrower, to recover from the sale of any collateral
24 that secured the Cornman Loan, or to recover on the guaranty supporting the Cornman
25 Loan.

26



V. CONCLUSION

The USACM Trust respectfully requests that the Court enter an order disallowing 80% of the claims against USACM listed in **Exhibit A** and allowing the remaining 20%. This objection concerns only claims based upon an investment in the Cornman Loan and not any other claims of any of the Direct Lenders. The USACM Trust also requests such other and further relief as is just and proper.

Dated: August 2, 2011.

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Copy of the foregoing and pertinent portion of Exhibits mailed by first class postage prepaid U.S. Mail on August 2, 2011 to all parties listed on Exhibit A attached.

LEWIS AND ROCA LLP

s/ Matt Burns
MATT BURNS